

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY KITSAP COUNTY TO
COMMUNITY SERVICES CORPORATION,
a Washington Corporation,

COMMUNITY SERVICES CORPORATION,
a Washington Corporation,

Appellant,

v.

KITSAP COUNTY, a Washington
Municipal Corporation, and
CITY OF WINSLOW, a Washington
Municipal Corporation, DOUGLAS
COOK, LEWIS A. LEEWENS, SHEILA
LEEWENS, JAMES W. PARKER, LUCILLE
PARKER, and JOHN H. RUDOLPH,

Respondents.

SHB No. 82-17

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, a request to review the denial of a shoreline
substantial development permit by Kitsap County to Community Services
Corporation, came on for hearing before the Shorelines Hearings Board,
Gayle Rothrock, Chairman, Nancy Burnett, Dennis Derickson, and

1 Beryl Robison, Members, convened at Lacey and Winslow, Washington, on
2 March 22, 23, and 24, 1983. William A. Harrison, Administrative Law
3 Judge, presided.

4 Appellant appeared by its attorney William T. Lynn. Respondent
5 Kitsap County appeared by Patricia K. Schafer, Deputy Prosecuting
6 Attorney. Respondent City of Winslow appeared by its attorney
7 Thomas M. Walsh. Respondents Cook, et al., appeared by their attorney
8 J. Fred Simpson. Reporters Bibi Carter, Nancy A. Miller, and
9 Janet Neer recorded the proceedings.

10 Witnesses were sworn and testified. Exhibits were examined. From
11 testimony heard or read and exhibits examined, the Shorelines Hearings
12 Board makes these .

13 FINDINGS OF FACT

14 I

15 This matter arises in Eagle Harbor on Bainbridge Island.
16 Specifically, the site of the proposed development is in the "back
17 bay," an environment characterized by mud flats intermittently covered
18 by the tidal waters.

19 II

20 In 1975, Kitsap County granted a shoreline substantial development
21 permit, with concomitant zoning agreement and planned unit development
22 approval, for 18 condominium units, known as Place 18, on the south
23 shore of the back bay. These were built by the applicant, Robert
24 Stewart Company. The units appear to be spacious and attractive, but
25 buyers could not be found, perhaps because of the prevailing market.

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1 As a result, the venture failed and its financier, Community Services
2 Corporation (CSC), acquired the property by foreclosure. CSC felt
3 that the addition of a dock for use of the residents would offer an
4 additional incentive for purchase of the condominiums. CSC has
5 applied to Kitsap County for a shoreline substantial development
6 permit to construct moorage for 24 boats at the site. These are
7 intended for the use of Place 18 residents exclusively, not for sale
8 or rent to the public, to the end that these shoreline residents may
9 have direct access to the water. This application was filed on March
10 4, 1982.

11 III

12 The proposed development would consist of docks and finger piers.
13 The site, as proposed, straddles the line of mean lower, low water and
14 would require dredging of both a basin and an access channel. Between
15 15,000 and 20,000 cubic yards of bottom material would be removed by
16 dredging.

17 IV

18 The Kitsap County Shoreline Master Program (KCSMP), at times
19 pertinent to this matter, designated the site and all the back bay in
20 a "rural" environment. KCSMP, Appendix III. Within the rural
21 environment piers and docks are a permitted use, as is dredging.
22 KCSMP-Use Activities-Shoreline Environmental Compatibility Chart,
23 p. 7-3.

24 V

25 The back bay is fed by three streams, one of which discharges some

1 500 feet west of the proposed development. Although the stream is
2 small, the saltwater at the site is measurably diluted with fresh
3 water from it and the other two streams.

4 VI

5 The tidal mud flats of the back bay support micro-algae which is
6 food for small invertebrates. These, in turn, are food for birds,
7 including water fowl, and for out-migrating fish. The proposed
8 dredging will remove the micro algae from the area to be dredged
9 (approximately 2.5 acres). The micro algae will not likely return.

10 VII

11 On April 21, 1982, Kitsap County issued a final declaration of
12 non-significance for the proposed development under the State
13 Environmental Policy Act, chapter 43.21C RCW.

14 VIII

15 Following a recommendation of conditional approval by the planning
16 staff, the Kitsap County Board of County Commissioners conducted a
17 public hearing and denied the CSC application on May 24, 1982. The
18 Commissioners' findings show reliance upon an expression of concern by
19 the State Department of Ecology (DOE) for the cumulative effect which
20 might result from approval of the CSC application should further
21 dredging proposals be approved in turn. The Commissioners' findings
22 also show reliance upon expression of concern by the State Department
23 of Game that anoxic sediment layers could be exposed and that
24 alternative marina sites be explored which would require less dredging
25 in intertidal areas. The following was entered as a finding of fact

26 FINAL FINDINGS OF FACT,
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1 unanimously adopted by the Commissioners:

2 A massive amount of material would have to be removed
3 and some of the concerns that citizens and
4 specialists have expressed about the impact on the
ecology there would be significant..."

IX

5 Appellant, CSC, requests review of the Commissioners' denial.
6 Certain neighbors moved to intervene in support of Kitsap County and
7 were permitted to so intervene. The City of Winslow (whose limits
8 encompass shoreline on the side of the back bay opposite the site)
9 moved and was permitted to intervene alternatively in support of
10 Kitsap County or in opposition to the County's action without
11 preparation of an environmental impact statement.
12

X

13 In September, 1982, the Commissioners amended the KCSMP to
14 redesignate the back bay of Eagle Harbor from "rural" to "natural."
15 Dredging is a prohibited use in the natural environment. KCSMP-Use
16 Activities-Shoreline Environmental Compatibility Chart p. 7-3. Final
17 approval of this amendment by DOE will curtail or eliminate any
18 cumulative impact from approval of this proposal as future proposals
19 of a similar nature will then be expressly prohibited in the back
20 bay. The DOE has not received all necessary documentation from Kitsap
21 County concerning the amendment and thus has not acted upon it as yet.
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XI

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.
25

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1 From these Findings the Board comes to these

2 CONCLUSIONS OF LAW

3 I

4 We have reviewed the declaration of non-significance issue by
5 Kitsap County in this matter and granted it substantial weight as
6 required by RCW 43.21C. We are left, however, with the definite and
7 firm conviction that a mistake has been committed. There is a
8 reasonable probability that the proposed development will have more
9 than a moderate effect on the quality of the environment. The large
10 quantity of dredging, its location within the shallow, stream-fed back
11 bay, and the deterioration that this proposal will cause to existing
12 fish and wildlife habitat are documented in the environmental
13 checklist and evidence before us. The declaration of non-significance
14 was clearly erroneous. See Norway Hill Pres. & Pro. Ass'n v. King
15 County, 87 W.2d 267, 552 P.2d 674 (1976). The action of Kitsap County
16 upon CSC's application for substantial development should therefore be
17 vacated and the application remanded for further consideration
18 following preparation of an environmental impact statement.

19 II

20 On remand, Kitsap County must apply the "rural" environment rules
21 of the approved and adopted KCSMP which were in effect on the date of
22 CSC's application for a substantial development permit. The CSC's
23 obligations and rights to develop vested when it applied for a
24 substantial development permit. Talbot v. Gray, 11 Wn. App. 807, 525

1 P.2d 801 (1974).¹

2 III

3 The site of the proposed development is an "estuary" as that term
4 is defined in the KCSMP at p. 2-1. This classification requires the
5 application of policies calling for restraint and close scrutiny of
6 the specific impacts of CSC's proposal. Policies Nos. 4 and 9,
7 Natural Systems KCSMP p. 5-2. It does not, however, constitute an
8 absolute bar to moorage if CSC can demonstrate that those impacts, as
9 proposed or mitigated, are within reasonable limits.

10 IV

11 So long as the proposed moorage is reserved exclusively for place
12 18 residents or their occasional guests and is not transferable to
13 others for continuous moorage, the proposed development is not a
14 "marina" as that term is defined in the KCSMP at p. 7-12. It then
15 falls within the express "community dock" exception of the definition
16 and should be evaluated under the piers and floating docks criteria of
17 KCSMP p. 7-13.

18 V

19 The proposed development is for a use and structure accessory to a
20 human abode and is therefore "residential development" as that term is

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- 22 1. The KCSMP anendment redesignating the back bay from "rural" to
23 "natural" will be effective when approved by the DOE under the
24 rule adoption procedure of the Administrative Procedure Act,
chapter 34.04 RCW. DNR, et al. v. Kitsap County, SHB 78-37 (1979,
Order on Pre-Hearing Motions).

1 defined in the KCSMP at p. 7-21. The proposed development should also
2 be evaluated under the criteria for residential development.

3 VI

4 We have reviewed the other contentions of the parties which are
5 presently ripe for consideration and find them to be without merit.

6 VII

7 Any Finding of Fact which should be deemed a Conclusion of Law is
8 hereby adopted as such.

9 From these Conclusions the Board enters this
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ORDER

Kitsap County's denial of Community Service Corporation's application for a shoreline substantial development permit is vacated, and the application is remanded to Kitsap County for further consideration, following preparation of an environmental impact statement.

DONE at Lacey, Washington, this 25th day of May, 1983.

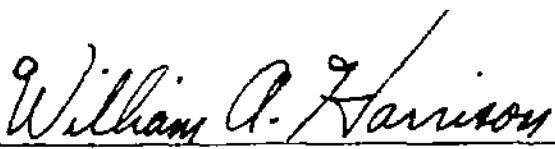
SHORELINES HEARINGS BOARD


GAYLE ROTHROCK, Chairman


NANCY BURNETT, Member


DENNIS DERICKSON, Member


BERYL ROBISON, Member


WILLIAM A. HARRISON
Administrative Law Judge